

VICTOR JIH, SBN 186515
 vjih@wsgr.com
 KELLY H. YIN, SBN 328380
 kyin@wsgr.com
 WILSON SONSINI GOODRICH & ROSATI
 Professional Corporation
 1900 Avenue of the Stars, 28th Floor
 Los Angeles, CA 90067
 Telephone: (424) 446-6900
 Facsimile: (866) 974-7329

LUIS LI, SBN 156081
 luis.li@wsgr.com
 WILSON SONSINI GOODRICH & ROSATI, P.C.
 633 West Fifth Street, Suite 1550
 Los Angeles, CA 90071
 Telephone: (323) 210-2900

DYLAN GRACE SAVAGE, SBN 310452
 dsavage@wsgr.com
 THOMAS WAKEFIELD, SBN 330121
 twakefield@wsgr.com
 WILSON SONSINI GOODRICH & ROSATI, P.C.
 One Market Plaza, Spear Tower, Suite 3300
 San Francisco, CA 94105
 Telephone: (415) 947-2000

*Attorneys for Defendants
 TikTok Inc. and ByteDance Inc.*

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

BERNADINE GRIFFITH, et. al,

 Plaintiffs,

 v.

 TIKTOK INC., et al.,

 Defendants.

Case No. 5:23-cv-00964-SB-E

**DEFENDANTS' SUPPLEMENTAL
 MEMORANDUM IN OPPOSITION TO
 PLAINTIFFS' SECOND MOTION TO
 ENFORCE COURT ORDER AND FOR
 EVIDENTIARY SANCTIONS**

Magistrate Judge: Hon. Charles Eick
 Action Filed: May 26, 2023
 Trial Date: November 25, 2024

**REDACTED VERSION OF
 DOCUMENT PROPOSED TO BE
 FILED UNDER SEAL**

I. INTRODUCTION

Plaintiffs’ second motion to enforce and for sanctions should be denied because Defendants have complied with the Court’s March 18 Order. Plaintiffs cannot dispute that Defendants have provided copies of three 200,000-row tables containing 3.7GB of data along with 53 charts and graphs and made the rest available for inspection. And as in their first motion, the data simply does not support Plaintiffs’ claims. Yet, as before, Plaintiffs claim that this fact demonstrates that there must be evidence that does support their claims. There is not. Defendants can only produce what they have, and Plaintiffs’ insistence that there must be more does not make it so. Plaintiffs’ arguments for sanctions are ultimately based on an unsupported legal theory, assumptions, and speculation.

II. DEFENDANTS COMPLIED WITH THE MARCH 18 ORDER

On April 15, 2024, Defendants produced the data the Court ordered.

Court Ordered	Defendants Produced
“... all <u>raw data</u> of domestic non-TikTok users ...”	<ul style="list-style-type: none"> Provided a copy of 200,000 rows from the “[REDACTED]” table (2.2GB). Made the remaining over 3 billion¹ rows available for inspection.
“... <u>use by processing</u> [and] generation ...”	<ul style="list-style-type: none"> Provided a copy of 200,000 rows from the “[REDACTED]” table (1.2GB). Made remaining available for inspection.
“... <u>use by</u> ... <u>aggregation</u> , combination or reporting ...”	<ul style="list-style-type: none"> Provided a copy of 200,000 rows from the “[REDACTED]” table (0.33GB). Made remaining available for inspection.

¹ The reference to “3 trillion” in the Joint Stipulation and the Savage Declaration conflated data points with data rows. While a 24-hour dataset can consist of over 1 trillion data points, the raw data at issue here contains over 3 billion rows.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Court Ordered	Defendants Produced
---------------	---------------------

“... **all uses** of the data
... which uses occurred
... at any time [over two
weeks] ...”

- Provided copies of 53 charts and tables reflecting use of unmatched data during the following two weeks.

See Dkt. 117 at 1-2 (March 18 Order) (emphasis added); Dkt. 148-7 ¶¶ 4-5. The three 200,000-row tables include over 350 combined fields and 3.7GB of data. The raw data table is so large that opening it crashes ordinary laptops and access requires help from e-discovery vendors. Defendants made the remaining billions of rows of data available for inspection at TikTok’s Transparency Center. Defendants remain willing to make the data available for inspection once Plaintiffs specify what they want and pick a date. *See* Dkt. 148-6 ¶¶ 3-4.

Plaintiffs’ issues reduce to 3 complaints that misapprehend law and facts.

Complaints about Inspection. Plaintiffs claim Defendants did not “produce” the data by making it available for inspection. They are mistaken. Rule 34 “permits the producing party to produce copies . . . or permit an inspection of responsive materials.” *Parkside/El Centro Homeowners Ass’n v. Travelers Cas. Ins. Co. of Am.*, 2022 WL 108609, at *2 (S.D. Cal. Jan. 11, 2022); *see also InteraXon Inc. v. NeuroTek, LLC*, 2017 WL 24721, at *5 (N.D. Cal. Jan. 3, 2017) (parties are “not required to produce copies . . . in lieu of . . . an inspection”).

An inspection makes sense here. Inspection reduces burden, especially when, as here, there is voluminous data. *Parkside/El Centro Homeowners Ass’n*, 2022 WL 108609 at *2. It also allows for control over sensitive data. *Rambus Inc. v. Hynix Semiconductor Inc.*, 2007 WL 9653194, at *4 (N.D. Cal. Sept. 25, 2007) (permitting “inspections of sensitive materials at a secure location”).

Complaints About Data Integrity. Plaintiffs’ arguments about how raw data is stored, null and 0 values, and the difficulties they face identifying related data do not support their request for sanctions either. Defendants need and can only

1 produce the data they have. *See* Dkt. 148-4 at 39:5-10. Plaintiffs thus cannot
 2 complain about null and 0 values when those are the values that appear in the tables
 3 as stored by TikTok in the normal course of business. Dkt. 148-9 ¶ 6. Plaintiffs
 4 may prefer that raw data be saved with HTTP headers, but what matters is how
 5 TikTok saved that data. Dkt. 148-8 ¶¶ 3-5. And Defendants are only required to
 6 produce the data as it is kept. *See Hahn v. Massage Envy Franchising, LLC*, 2014
 7 WL 12899290, at *8 (S.D. Cal. July 24, 2014) (party produced “raw data” in SQL
 8 format, “Rule [34] provides that the data can be produced as ‘maintained in the
 9 usual course of business’”). None of this shows non-compliance.

10 Complaints About “Use” of Data. Defendants produced documents
 11 reflecting all uses of non-TikTok user data. The “[REDACTED]
 12 [REDACTED]” table reflects the processing. The “[REDACTED]
 13 [REDACTED]” table reflects any aggregating, combining, and reporting of
 14 the data. And Defendants produced 53 charts and graphs they found that used
 15 unmatched data, including for overall match rates, match rates by device or
 16 geography, analysis of deduplication efforts, and the frequency of events. These are
 17 plainly examples of uses to improve matching and TikTok’s overall systems.
 18 Defendants produced these even though they use de-identified data that cannot be
 19 associated with a non-TikTok user. There was no gamesmanship or non-
 20 compliance—any so-called “missing” uses (*e.g.*, conducting an IP range valuation)
 21 did not appear in the data gathered after a reasonable search during the relevant two
 22 weeks. *See Lever Your Bus., Inc. v. Sacred Hoops & Hardwood, Inc.*, 2021 WL
 23 243308, at *8 (C.D. Cal. Jan. 25, 2021) (where party did not “store data of its
 24 website visitors,” court did not compel production of data “that does not exist”).

25 **III. THE COURT SHOULD DENY PLAINTIFFS’ REQUEST FOR** 26 **EVIDENTIARY SANCTIONS**

27 This is the second time Plaintiffs have requested adverse inference
 28 sanctions. The first time, the Court explained during hearing that:

1 [Y]our requested sanction seems quite counterintuitive to say we want
 2 it established that they collect data and based on their representation to
 3 us that they didn't collect data on this particular day. I see no logical
 4 basis for the evidentiary sanction that you request.

5 Dkt. 148-4 at 21:13-18. Plaintiffs now bring the same request without explaining
 6 why this time is different. If anything, it is even more clear now that an adverse
 7 inference is inappropriate. Three separate productions of data confirm that the facts
 8 do not support Plaintiffs' theories.

9 Plaintiffs have not made the showing to support an adverse inference—an
 10 "extreme sanction" usually reserved for spoliation or other intentional
 11 misconduct. *MediaTek Inc. v. Freescale Semiconductor, Inc.*, 2013 WL 6869933,
 12 at *2 (N.D. Cal. Dec. 31, 2013). Even with misconduct—which does not exist
 13 here—any adverse inference must be grounded in fact, not speculation. *See Lakes*
 14 *v. Bath & Body Works, LLC*, 2019 WL 2124523, at *4 (E.D. Cal. May 14, 2019).
 15 Especially where, as here, "the premise" of a discovery motion "is false," and the
 16 moving party "cannot cite a single case in which . . . an adverse jury instruction was
 17 imposed under similar circumstances," sanctions should be denied. *MediaTek*,
 18 2013 WL 6869933, at *4-5. And any adverse inference must be grounded in real
 19 prejudice and not be pursued for "a strategic advantage." *Id.* at *5 n.1.

20 IV. CONCLUSION

21 In his recent order adjusting the schedule, Judge Blumenfeld instructed the
 22 parties to "redouble their efforts to cooperate reasonably." Dkt. 142 at 2. Here,
 23 though, Plaintiffs chose to move for sanctions rather than follow the meet-and-
 24 confer process. *See generally Ashley v. Moore*, 2023 U.S. Dist. LEXIS 72169, at
 25 *3-4 (C.D. Cal. Apr. 24, 2023) ("Rules and procedures are designed to deter the
 26 parties from playing 'fast and loose.'). Defendants have attempted to answer
 27 Plaintiffs' reasonable questions, to cooperate, and to resolve misunderstandings and
 28 disagreements, both here and regarding other recent discovery requests. There is no
 basis for sanctions. This Court should deny the motion.

1 Dated: May 2, 2024

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

2
3 By: /s/ Victor Jih

4 Victor Jih

5 *Attorneys for Defendants*
6 *TikTok Inc. and ByteDance Inc.*
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28